

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING,

No. C-12-1830 EMC

Plaintiff,

**ORDER GRANTING MOTION TO
INTERVENE BY UNITED STATES OF
AMERICA**

v.

LAW SCHOOL ADMISSION COUNCIL
INC, *et al.*,

(Docket No. 47)

Defendants.

Plaintiff California Department of Fair Employment and Housing (DFEH) filed suit against Defendant Law School Admission Council, Inc. (LSAC) seeking damages and injunctive relief over alleged failures of Defendant to provide reasonable accommodations to test-takers of the Law School Admission Test (LSAT), in violation of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12101, *et. seq.*). The United States filed a motion to intervene in this matter pursuant to Fed. R. Civ. P. 24(a)(2) and 24(b) on September 5, 2012. Docket No. 47. For the reasons stated on the record and in this order, the United States' motion to intervene is hereby **GRANTED**.


A movant seeking mandatory intervention under Rule 24(a)(2) "must claim a 'significantly protectable' interest relating to the property or transaction which is the subject of the action," the disposition of which "may as a practical matter impair or impede its ability to protect that interest." *United States v. Aerojet Gen. Corp.*, 606 F.3d 1142, 1148 (9th Cir.2010) (citations omitted); *see also* *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011). As stated more fully on the record, the Court finds that the United States has met this burden. This suit

1 directly implicates the United States’ interest in enforcing Titles III and V of the ADA, and its
 2 ability to craft “clear, strong, consistent, enforceable standards” in implementing the statute and its
 3 regulations as directed by Congress. *See* 42 U.S.C. § 12101(b)(2); *see also Id.* §§ 12101(b)(2)-(3) (a
 4 stated purpose of the ADA was “to ensure that the Federal Government plays a central role in
 5 enforcing the standards established [in the Act] on behalf of individuals with disabilities”). A
 6 governmental agency has a significant protectable interest in defending its regulations from
 7 challenges and in ensuring that the interpretation of the statutes and regulations it is charged with
 8 enforcing are accurately presented to the Court in the course of litigation. *See Smith v. Pangilinan*,
 9 651 F.2d 1320 (9th Cir. 1981), *Ceres Gulf v. Cooper*, 957 F.2d 1199 (5th Cir. 1992), and *Nuesse v.*
 10 *Camp*, 385 F.2d 694 (D.C. Cir. 1967). *See also Sec. & Exch. Comm’n v. U.S. Realty & Imp. Co.*,
 11 310 U.S. 434, 460 (1940) (finding that “the Commission has a sufficient interest in the maintenance
 12 of its statutory authority and the performance of its public duties” to entitle it to intervention by right
 13 under Rule 24). The Court also finds that the United States’ interests are not adequately represented
 14 by any existing parties to this suit. Unlike DFEH, whose jurisdiction is confined to the State of
 15 California and which does not have direct enforcement authority over the ADA, the United States
 16 has an interest in enforcing the ADA and its implementing regulations on a national scale. All the
 17 other requisites of intervention of right under Rule 24(a) are satisfied. The United States’ motion to
 18 intervene as of right under Rule 24(a)(2) is therefore **GRANTED**.

19 In the alternative, the United States seeks permissive intervention under Rule 24(b). LSAC
 20 did not oppose the United States’ motion for permissive intervention, but asks the Court to limit the
 21 scope of its participation to issues concerning only those parties residing California. As stated more
 22 fully on the record, the Court finds that the United States has also met the criteria for permissive
 23 intervention under Rule 24(b)(2). In light of the fact that the United States could initiate a separate
 24 nationwide class action lawsuit under 42 U.S.C. § 12188(b) on the same facts and legal theories
 25 alleged in the instant complaint, the Court declines LSAC’s invitation to restrict the United States’s
 26 intervention to only those claims concerning California residents. Thus, the Court also **GRANTS**
 27 the United States’ motion for permissive intervention under Rule 24(b)(2) without restriction.
 28

However, the Court is concerned about needless duplication and inefficiencies in the litigation resulting from the addition of the DOJ to this suit. The parties are directed to meet and confer before the next Case Management Conference to develop a litigation plan addressing how they propose to maintain efficiency and avoid duplication as this suit moves forward. The litigation plan shall be submitted as part of the parties' joint case management conference statement.

IT IS SO ORDERED.


EDWARD M. CHEN
United States District Judge